IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6256 OF 2005

Sau Meena Rajendra Deore ...Applicant

Versus

Shri Narendra Gajanan Banait & Ors. ...Respondents

Shri M.S.Karnik for the Applicant.
Shri D.P.Adsule, A.P.P for the State.

WITH
CRIMINAL APPLICATION NO.6258 OF 2005

Sau Meena Rajendra Deore ...Applicant

Versus

Shri Gajanan Ranganath Banait & Ors. ...Respondents

Shri M.S.Karnik for the Applicant.
Shri U.V.Nikam, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 24, 2006.

P.C.:

1. Heard Shri Karnik appearing for the Applicant in support of prayer for grant of leave to prefer an Appeal. The Applicant is the complainant in two separate complaints filed under section 138 of the Negotiable Instruments Act, 1881. Both the complaints have resulted in acquittal.

2. Since facts of both the cases are more or less

similar, I am referring to the facts of the case in Criminal Application No.6256 of 2005. The case of the Applicant is that a hand-loan of Rs.50,000/- was advanced by him to the first Respondent. The first Respondent was to repay the amount on or before 01st March, 1999. A cheque was issued for discharge of the said liability by the first Respondent which was dishonoured on the basis of which the complaint has been filed.

3. Shri Karnik appearing for the Applicant submitted that the learned Trial Judge has completely ignored the statutory presumption under section 139 of the Negotiable Instruments Act, 1881 and has put entire burden on the Applicant. He contended that the Applicant was under no obligation to prove the existence of liability on the part of the first Respondent. He submitted that the effect of execution of a demand promissory note by the first Respondent is not at all considered by the Trial Court.

4. I have considered the submissions. The Applicant admitted in the cross-examination that she has advanced hand-loans to several other persons who

were named by her. She also admitted that entries in respect of money lending business are maintained in prescribed register. She stated that entries in respect of money lending business carried on by her in 1999 are available with her. During her cross-examination she was called upon to produce the registers for the year 1998 and 2002. The Applicant did not specifically deny that she was possessing the said registers. However, she failed to produce the said registers. The specific case of the first Respondent was that the amount of loan has been repaid in the year 2002. Apart from the said fact, the learned Trial Judge found that the liability of the first Respondent is not disclosed in the income-tax return filed by the Applicant for the year 2001-02.

5. Considering the specific case of the first Respondent of having repaid the loan amount in the year 2002, the learned Trial Judge came to the conclusion that an adverse inference has to be drawn for not producing the registers of the money lending business of the relevant period though admittedly the registers were maintained and were in custody of the Applicant.

6. It is well settled law that for rebutting presumption under section 139 of the Negotiable Instruments Act, 1881 it is not necessary in every case for the accused to lead evidence. The presumption can be rebutted even on preponderance of probabilities. In case of the second Application, facts are not different. Here also the relevant registers were withheld by the Applicant.

7. The view taken by the learned Judge is a possible view which could have been taken on the basis of the evidence on record. Merely because another view can be taken is no ground to entertain the Appeal against acquittal. No case is made out for grant of leave. Accordingly, Applications are rejected.

JUDGE